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No. 93-563

In The

Supreme Court of the United States

October Term, 1993

GARY STRATEMEYER,

Petitioner,

v.

LINCOLN COUNTY and MACO WORKERS' COMPENSATION TRUST,

Respondent.

On Petition For Writ Of Certiorari To The Montana Supreme Court

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does the statutory exclusion from workers' compensation coverage of mental injuries without a physical component violate Article II, Section 4 of the Montana Constitution?

LIST OF PARTIES

Respondent accepts Petitioner's version of the List.

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OPINIONS OF THE COURTS BELOW

Respondent accepts Petitioner's version of the Opinions.

JURISDICTIONAL STATEMENT

This Court does not have proper jurisdiction in this case because the requirements of Title 28, Section 1257 (3) of the U. S. Code are not met. The basis for this statement is set forth with specificity in the Argument, below.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves Article II, Section 4 of the Montana Constitution:

> The dignity of the human being is inviolable. No person shall be denied equal protection of the laws. Neither the State nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Also at issue is the injury definition section of the Montana Workers' Compensation Act, Section 39-71-119, Montana Code Annotated (1987):

> 39-71-119. Injury and accident defined.
> (1) "Injury" or "injured" means:

(a) internal or external physical harm to the body;
(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or
(c) death.

(2) An injury is caused by an accident. An accident is:
(a) an unexpected traumatic incident or unusual strain;
(b) identifiable by time and place of occurrence;
(c) identifiable by member or part of the body affected; and
(d) caused by a specific event on a single day or during a single work shift.

(3) "Injury" or "injured" does not mean a physical or mental condition arising from:
(a) emotional or mental stress; or
(b) a nonphysical stimulus or activity.

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

(5) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical harm in relation to other factors contributing to the physical harm.

STATEMENT OF THE CASE

Facts Relative to the Claim

Petitioner was employed as a deputy sheriff; and in May of 1990, he responded to an emergency call involving a suicide attempt by a teenage girl. He administered what first aid he could for the gunshot wound and then assisted the ambulance crew in removing her from the house for transport to the hospital. The girl died shortly thereafter.

Petitioner continued to work until he took medical retirement based upon "post-traumatic stress disorder". He filed for workers' compensation benefits claiming his mental disability arose from the aforementioned suicide incident. Benefits were denied by Respondent on grounds that his condition did not fit within the statutory definition of injury in effect at the time of the incident.

Facts Pertinent to the Challenged Statute

The 1987 Montana Legislature enacted a comprehensive reform of the state's Workers' Compensation Act in response to significant public concern regarding the financial soundness, escalating costs, and coverages of the existing system. For a number of years preceding the 1987 session, the "crisis" in workers' compensation had dominated headlines in the state and was a priority issue for employers and employees alike. Comprehensive reform of the Act was demanded; and in response to that demand, the Legislature enacted what came to be known as the "new law" of workers' compensation in Montana.

The definition of injury at issue here is a product of that reform action.

Origin of Action

Petitioner sought review of the benefit denial before the state Workers' Compensation Court, which determined that he was not entitled to benefits because of the exclusion of mental injuries from the definition of compensable injury in the Act, but that the exclusion was void as violating the equal protection provision of the Montana Constitution. Respondent filed for rehearing, which was denied.

Respondent appealed the lower court's decision to the Montana Supreme Court, which reversed the holding of unconstitutionality under the Montana Constitution. Petitioner sought rehearing, which was denied. The Petition for Writ of Certiorari was then filed by Petitioner.

REASONS WHY THE PETITION SHOULD BE DENIED

Summary of Argument

This Court cannot properly exercise jurisdiction over this matter because the statutory requirements are not met. The case below involved the interpretation of a provision of the Montana Constitution by the Montana Supreme Court. There is no federal question; and the decision below was made on independent state grounds.

The decision reached by the Montana Supreme Court was correct and proper; the classification created excluding injuries without a physical component bears a rational relationship to legitimate state interests of cost containment.

There are alternative grounds available in the record to support the judgment of the court below.

The result sought by Petitioner would create much confusion and uncertainty in the area of workers' compensation law in Montana, as well as many other states that exclude benefits for mental conditions under various statutory provisions. Declaring a portion of the injury definition void would throw the system open to unexpected claims without benefit of proper legislative policy guidelines.

A. This Court cannot properly exercise jurisdiction in this matter, because there is no federal question at issue as required in 28 U.S.C. 1257(3).

The Montana Supreme Court ruled on the question as to whether a specific state statute violated the equal protection provision of the Montana Constitution; that was the "sole issue" before the court [Appendix A, page A-3, Petition for Writ]. The judgment of the lower state court also involved a finding as to validity under the Montana Constitution. No court in this matter has ruled on any federal question. Rule 14.1(h) of this Court requires that an explanation be provided as to how the state court handled the federal issue. In this case, there can be no explanation because there was no federal issue to be handled.

Any question of equal protection in American law must obviously take into consideration this Court's 14th Amendment analysis as a floor below which challenged actions cannot fall. However, the Montana Supreme Court has often stated that the equal protection provisions of the state and federal constitutions provide "generally equivalent but *independent* protections". *Matter of C. H.*, 210 Mont. 184, 198, 683 P.2d 931 (1984) [emphasis added]. The state Supreme Court has also ruled that the Montana Constitution provides even greater protections to individuals than does the 14th Amendment. *Cottrill v. Cottrill Sodding Service*, 229 Mont. 40, 42; 744 P.2d 895 (1987). A Montana statute could pass muster under the 14th Amendment but fail to provide the greater protections invoked by Article II, Section 4 of the Montana Constitution. The grounds for such a finding (as in the present case) are independent of federal equal protection considerations.[1]

The mere fact that a state constitutional provision is similar to federal law does not mean a federal question is presented. Construction of provision of a state constitution is best undertaken by the state's highest court. This Court should not exercise jurisdiction in this matter.

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[1] If the state court only used federal decisions as persuasive authorities in coming to an independent interpretation of the state's constitution or statutes, an independent state ground of decision exists and there is no federal jurisdiction to review the judgment. 32A *Am.Jur.2d Federal Practice & Procedure*, Section 673 (1982).

B. If this Court does accept jurisdiction, the Petition should be denied because the decision below is well grounded and reaches the correct result.

1. Rules of Construction Followed

The Montana Supreme Court's analysis of the constitutional challenge was succinct and followed long established principles of Montana constitutional law: (1) courts must approach with caution the power to declare legislative enactments void;

(2) the constitutionality of legislative enactments is prima facie presumed; every intendment in its favor will be presumed unless proven beyond reasonable doubt by party challenging the statute; and

(3) the question for the court must be 'is it possible to uphold the action', not 'is it possible to condemn it'. *State v. Dixon*, 66 Mont. 76, 213 P. 227 (1923); *Fallon County v. State*, 231 Mont. 443, 753 P.2d 338 (1988).

2. Proper Test Identified and Followed

The Montana Supreme Court correctly considered that challenges to workers' compensation statutes fall within the rational relationship test since there is no fundamental right or suspect class involved. *Eastman v. Atlantic Richfield Co.*, 237 Mont. 332, 777 P.2d 862 (1989). The proper question is whether the classification bears a rational relationship to a legitimate governmental objective.

The court below identified the legitimate state interest: promoting financial interests of business to improve

the state's economic condition [citing *Meech v. Hillhaven West, Inc.*, 238 Mont. 21, 776 P.2d 488 (1989)] and more specifically, providing compensation coverage for the state's injured workers at reasonable cost.

The court then determined that the classification of excluding mental injuries was rationally related to those interests: (1) the Legislature, in light of the workers' compensation system's difficulties which prompted the reform, reasonably took a cautious approach to benefits and coverages to help assure viability of the system; and (2) the Legislature recognized the difficulties stress claims present to a compensation system in which the causal relationship between the injury and the employment situation is so crucial.

On these grounds, the Montana Supreme Court properly ruled that the classification did bear a rational relationship to legitimate state interests and therefore did not violate equal protection under the state constitution.

3. Reasons Presented in Petition Not Well Founded

Petitioner argues that the purpose for the classification must be apparent in the legislation itself or in the legislative history. Such a position is contrary to rulings by this Court in *Kadramas v. Dickinson Public Schools*, 487 U.S. 450 (1988), the Ninth Circuit Court of Appeals in *Mountain Water v. Mont. Dept. of Public Serv. Reg.*, 919 F.2d 593 (9th Cir. 1990), and the Montana Supreme Court in *Cottrill, supra*. Those cases articulate the well established principle of review under the rational relationship test

that if a court can find *any* legitimate state purpose for the statute, it will not be declared void.

Petitioner argues that cost-saving is not a sufficient reason for a classification because of this Court's ruling in *Shapiro v. Thompson*, 394 U.S. 618 (1969). The *Shapiro* case involved an issue which impinged on the fundamental right to travel, thereby triggering a strict scrutiny analysis which is clearly distinguishable from the present case.

Petitioner argues that the *Cleburne* case [473 U.S. 432 (1985)] provides grounds for invalidating the present classification. This Court, in *Cleburne*, ruled that a local zoning ordinance requiring a special use permit for a group home for the mentally retarded violated the 14th Amendment. It found there was no showing of any rational basis that the home would pose a special threat to the city's legitimate zoning interests and therefore was void because it apparently established a classification based on irrational prejudice.

No such motivation by the Legislature can be shown in this case. The motivation here was to codify the existing law excluding coverage for "mental-mental" injuries and to not expand coverages under the Workers' Compensation Act at a time when rising costs were threatening the viability of the entire system. There is no evidence that the Legislature suffered from any irrational prejudice toward the mentally disabled as was found in *Cleburne*.

C. There are Alternative Grounds to Support the Judgment Below

Even though not relied upon by the court below, there are additional alternative grounds shown in the record to support the judgment below.

1. Clear Statutory Language

The language adopted to exclude stress claims rationally relates to the goal of clarifying language in the Act, so as to make the law more clear to all participants in the system and thereby reduce litigation, which was shown to be costly to the system and often led to expansion of benefits by the courts as they interpreted language that was perceived to be overly broad. This goal was codified in the new public policy section of the Act (Section 39-71-105, MCA) referred to by Petitioner. The Legislature declared that " . . . the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities". The definition at issue is clearly rationally related to that legitimate goal.[2]

2. Precedents from Other States

The highest courts in other states have upheld statutory distinctions between mental and physical injuries in workers' compensation acts that were challenged as violating equal protection. See *Holford v. Regents of Univ. of*

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[2] Minutes of the committee hearings on the reform legislation reflect public and expert concern that the language in the Act was a source of many problems in the system.

Cal., 796 P.2d 259 (1990); *Reigle v. W.C.A.B. (Federal Exp.)*, 601 A.2d 1331 (1992); *Toto v. Industrial Com'n. of Arizona*, 144 Ariz. 508, 698 P.2d 753 (1985).

3. Classification Not Wholly Arbitrary and Irrational

This Court has stated that to void a statute under the rational relationship test, there must be a showing of arbitrariness and irrationality. *Kadramas, supra.* The classification at issue codified existing state law denying mental-mental claims and is the rule of law in many other states as well. " . . . denying compensation in the 'mental-mental' category continues, however, to command *a substantial following." Larson, The Law of Workmen's Compensation*, Section 42.23, p. 7-894, emphasis added. Larson notes that 29 states have removed the threshold requirement that there be a physical component to a compensable injury; 21 states, like Montana, retain the requirement. Section 42.25(c), pp. 7-959, 960. Clearly, this classification is neither arbitrary nor irrational.

D. Remedy Sought Would Create Confusion

Reversal of the Montana Supreme Court's decision would lead to problematic confusion in the law governing workers' compensation. Stress claims would by necessity have to be evaluated under legislative policies and guidelines as to causation, time-definiteness, etc., which were drafted to address physical injuries arising out of and in the course and scope of employment. Such policies could not be expected to address the unique

nature of stress claims, and changes in policy to do so rightfully are within the province of a state legislature, not the courts. To void the exclusion for mental claims would lead to endless confusion and uncertainty in this already complex area of the law.

CONCLUSION

This Court cannot properly exercise jurisdiction in this matter wherein a state statute has been assailed on grounds it is repugnant to the state's constitution. The court below correctly analyzed the challenge to the statute and reached the correct result.

The statute could be upheld on alternative grounds; and the remedy sought would lead to confusion in the law of workers' compensation.

WHEREFORE, Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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